

A Citizen's Guide To Request Army Records Under The Freedom of Information Act (FOIA)



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INTRODUCTION

This guide is intended to assist with the proper procedural requirements of a Freedom of Information Act (FOIA) requests for Department of the Army records. It will provide you with a brief description of the FOIA process. The information is not intended to be definitive or exhaustive. More information can be found in the Army Regulation cited below at 32 Code of Federal Regulations, Part 518, published in the Federal Register, Vol. 71 No. 35, February 22, 2006.

The FOIA generally provides that any person has a right, to request existing federal agency records. Records can be released except to the extent that such records (or portions) are protected from public disclosure by one or more of nine FOIA exemptions, which include three special law enforcement record exclusions.

The FOIA, which is known by its legal cite as Title 5 United States Code, Section 552, along with the Department of Defense and Army Regulations, govern how requests will be processed within the Army. Army Regulation 25-55, The Department of the Army Freedom of Information Act Program, can be viewed at the following website:

http://www.apd.army.mil/pdf/r25_55.pdf

Due to its size and complexity, Army components balance the goals of centralization of authority to promote uniform decisions and decentralization of process to facilitate timely and accurate responses. Centralization permits functional areas of responsibility to exist under Initial Denial Authorities (IDAs). The IDAs act upon and make release determinations of functional area records. Decentralization allows the Army Staff, Commands and Installations to operate their own FOIA offices and respond directly to the public.

Before submitting a FOIA request, you should first consult the listing of IDAs and other Points of Contact (POC) and their corresponding responsibilities to help determine where to submit your FOIA request in order to receive a more efficient and timely response.

Section I. Frequently Asked Questions

1. What is the Freedom of Information Act?

A Federal law that establishes the public's right to request existing records from federal government agencies.

2. Who can file a FOIA request?

Any person, U.S. citizen or foreign national, a private organization, or a business can file a FOIA request, but **not** a federal agency or a fugitive from the law.

3. Should I file a FOIA request?

We have found the internet to be a valuable tool in researching Army information. Vast amounts of information are already publicly available on various government and non-government websites. You may wish to conduct internet searches prior to submitting a FOIA request so you can have immediate access to the information you are seeking.

4. What agencies are subject to the FOIA and what type of information can be requested?

The FOIA's scope includes departments, agencies, and offices of the Executive Branch; which includes federal regulatory agencies and corporations. However, Congress, the federal courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the FOIA, but some states have their own equivalent access laws for state records. Any information can be requested; however, if responsive records are located, they must undergo a release determination process and the records (or portions thereof) may or may not be released dependent upon the application of FOIA exemptions.

Also, it should be noted that the Army does not maintain records indefinitely and there are various retention periods for Army records. In some cases, the records you request may have been destroyed in accordance with the Army Records Information Management System and may no longer exist or be found.

5 What is an agency record?

Any product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or

format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under federal law in connection with the transaction of public business and in Army possession and control at the time the FOIA request is made. Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence are **not** considered agency records and are not subject to the FOIA.

6. Can I ask questions and will they be processed as a FOIA request?

Questions and interrogatories will not be processed as FOIA requests. The FOIA does not require federal agencies to answer questions, render opinions, do legal research, compile or analyze data, conduct surveys, speculate or provide subjective evaluations. Proper FOIA requests are those seeking existing physical or electronic records, such as those mentioned above. If an Army activity chooses to provide explanations that may respond to questions in the course of processing a FOIA request, it will be under circumstances that are reasonable and appropriate in the interest of customer service.

7. How do I submit a FOIA request?

FOIA requests may either be in writing or electronic mail; however, if your FOIA request must also be processed under the provisions of the Privacy Act (i.e. you are also requesting records pertaining to yourself) a written, signed and notarized request is required.

- Address your inquiry as a: "Freedom of Information Act Request," preferably within the request letter and on the envelope; then address the request directly to the FOIA Office that would likely to have the information your seeking, or to the Army Initial Denial Authority with purview over the requested subject matter. If you are still unsure which Army element to contact for information, you may contact:

Department of the Army
Freedom of Information Act Office
7701 Telegraph Road, Suite 144
Alexandria, VA 22315-3905

Telephone: (703) 428-6508,
Email: dafoia@conus.army.mil

As they will attempt to assist you; please note, the Department of the Army Freedom of Information Act Office is not a repository for Army records and

information, and often must conduct research in order to refer your request to the proper organization.

- State your willingness to pay applicable fees, if any. If you seek a fee waiver, provide a justification. Refer to the section titled “Do I have to pay for a FOIA request” for more information regarding fee waivers.
- Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, contract number, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the activity to conduct an organized, non-random search.

8. Reasons for not releasing a record?

There are several reasons why an Army activity may not release a record or portions of a record requested under FOIA:

- The record is not:
 1. Maintained by the office receiving the request;
 2. Is not under the purview of the office receiving the request; or
 3. The office receiving the request does not have the authority to release the record. Under such circumstances the request is referred to another Army, Department of Defense, or federal agency for a release determination.
- The Army activity determines, through knowledge of its files and reasonable search efforts, that it neither controls nor otherwise possesses the requested record. In such instances a “no record” response may be provided.
- A record has not been described with sufficient detail to enable the Army activity to locate it by conducting a reasonable search.
- The requester has failed unreasonably to comply with procedural requirements, including payment of fees imposed by the FOIA, Department of Defense policy and the governing Army Regulation 25-55.
- The request is withdrawn by the requester.

- The request is a duplicate or records have been previously provided to that requester.
- The information requested is not a record within the meaning of the FOIA and AR 25-55.
- The record is denied in whole or in part in accordance with procedures set forth in the FOIA and AR 25-55.

9. What are the nine FOIA exemptions?

The FOIA maintains nine exemptions to the general presumption of mandatory disclosure. Generally, Congress intended the exemptions to protect against disclosure of information which would substantially harm national defense or foreign policy, individual privacy interests, business proprietary interests, and the efficient operation of governmental functions. Records that meet the exemption criteria of the FOIA may be withheld from public disclosure, in whole or in part, and need not be published in the Federal Register, made available on public websites, in libraries, on electronic reading rooms as defined by the FOIA, or provided in response to a FOIA request.

- (b) (1) - records currently and properly classified in the interest of national defense, security or foreign policy.
- (b) (2) - records related solely to internal personnel rules and practices, which, if released, would allow circumvention of an agency function, rule, policy or statute, thereby impeding the Army in the conduct of its mission. There are two profiles, LOW and HIGH.
 - LOW - Records qualifying under the LOW (b) (2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records;
 - HIGH - Records qualifying under HIGH (b) (2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of procedures thereby substantially hindering the effective performance of a significant function of the department of the Army;

Examples include but are not limited to: Operating rules, guidelines and manuals for investigators, inspectors, auditors or examiners that must remain privileged in order to fulfill a legal requirement; personnel and other administrative matters, such as examination questions and answers used in training courses or in determining the qualification of candidates for employment, entrance on duty, advancement or promotion; computer software the release of which would allow circumvention of a statute, rule, regulation, order, directive or instruction; installation or building vulnerability assessments.

- (b) (3) - specifically exempted from public disclosure by statute. Records concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld;

Based on the annual FOIA report, Army information exempt from release under the following statutes may include but are not limited to: National Security Agency Information; Technical Data Packages; Certain sensitive information of foreign governments and international organizations; Confidentiality of Financial Records; Confidentiality of Medical Records; Research other than Contracts & Grants; Maps, Charts and Geodetic Data; Personnel in Overseas Sensitive or Routinely Deployable Units; National Historic Preservation; Data Sheets involving control of arms exports and imports; Contract Proposal Information; Pre-Award Protest document; Contract data subject to the Procurement Integrity Act; Identities of Undercover Intelligence Officers, Agents, Informants and Sources; POW/MIA Personnel; and Intelligence Sources and Measures.

- (b) (4) - trade secrets, commercial or financial information obtained from a person or organization outside the government on a privileged or confidential basis, which, if publicly released would result in competitive harm, impair the Army's ability to obtain similar information in the future or harm some other legitimate government interest.

Examples include but are not limited to: Commercial or financial information received in confidence in connection with loans, bids, contracts, proposals, trade secrets, inventions, discoveries, or other proprietary data; Statistical data concerning contract performance, income, profits, losses, and expenditures if offered and received in confidence from a contractor or potential contractor; Personal statements given in the course of inspections, investigations or audits that are received and retained in confidence and that contain trade secrets or information that is normally considered confidential or privileged; Financial data provided in confidence by private employers in connection with locality wage surveys; Scientific and manufacturing processes,

developments and other information submitted in connection with a research grant; Technical or scientific data developed by a contractor in whole or in part at private expense wherein the contractor has retained legitimate proprietary interests; Computer software that is copyrighted.

- (b) (5) - internal records that are pre-decisional in nature and part of the decision making process that contain advice, subjective evaluations, opinions and recommendations. Also within the scope of this exemption are attorney-client and attorney work product privileged documents.

Examples include but are not limited to: Nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions; Advice, suggestions, or evaluations prepared on behalf of the Army by individual consultants, board, committees, councils, groups, panels, conferences, commissions, task forces, or other groups formed for the purpose of obtaining advice and recommendations; Nonfactual portions of evaluations of contractors; Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Army functions; Trade secrets or other confidential research development, or commercial information owned by the government, where premature release is likely to affect the government's negotiating position or other commercial interests; Records that are exchanged among agency personnel as part of the preparation for anticipated litigation before any federal, state or military court, or administrative proceeding by an agency, as well as records that qualify for the attorney-client privilege; Portions of official reports of inspection, audits, investigations or surveys pertaining to safety, security, or other internal management, administration or operation when the information has been treated by the courts as privileged against disclosure in litigation; Computer software that reveals policies, functions, decisions or procedures which is deliberative in nature, the disclosure of which would inhibit or chill the decision making process. Included are computer models used to forecast budget outlays, calculate retirement costs, or optimize models on travel costs; Planning, programming and budgetary information which is involved in the defense planning and resource allocation process.

- (b) (6) - records which, if released, would result in a clearly unwarranted invasion of personal privacy, such as information contained within personnel and medical files. Release of information regarding an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited.

Examples include but are not limited to: Records compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the armed forces, and the eligibility of civilian, military and contractors for security clearances or access to particularly sensitive classified information; Reports, records and other material pertaining to personnel matters in which administrative action, including disciplinary action may be taken; Records containing items of personal information pertaining to individuals such as social security numbers, dates of birth, home addresses, home telephone numbers, personal email addresses; Evaluations of performance and performance counseling; Financial information included on time cards, leave and earning statements, and travel vouchers; Particularly sensitive, often graphic details pertaining to an individual's death, including autopsy reports.

- (b) (7) - records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This Exemption has multiple parts that allow withholding of information that could interfere with law enforcement proceedings, deprive a person of a right to a fair trial or impartial adjudication, cause an unwarranted invasion of personal privacy, identify a confidential source or information provided by a confidential source, reveal investigative techniques and procedures that could allow circumvention of the law, or endanger the life or physical safety of an individual. This exemption also applies to law enforcement investigations such as Inspector General investigations. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.
- (b) (8) - records for the use of an agency responsible for the regulation or supervision of financial institutions. The Army generally does not maintain information subject to this Exemption.
- (b) (9) - records containing geological and geophysical information and data (including maps) concerning wells. The Army generally does not maintain information subject to this Exemption.

10. What is a denial?

When information is withheld, whether in whole or in part, for one or more of the exemptions identified above, this constitutes a denial under the FOIA. When this happens, you should be notified in writing by an Initial Denial Authority (IDA) and given appeal rights. IDAs are denial authorities for records that fall under their functional areas as listed in Appendix A. Redacted records have the denied information removed from where it was originally located within the document. If your request is denied in part, you should receive information regarding the portions that were withheld.

11. Can I appeal a denial?

Yes. If your request is initially denied, in whole or in part, under one or more of the above exemptions, you should be advised of your appeal rights and the proper procedures for submitting an appeal. You are usually given 60 days from the date of the correspondence to appeal. If you are not satisfied with the appeal determination, you may seek judicial review.

12. How long will it take for my request to be processed?

Generally, the Army processes requests in order by date of receipt. Whenever possible, an initial determination to release or deny a record is made and final responses are issued to requesters within 20 working days after receipt of the request by the appropriate Army FOIA Office that maintains the responsive information and/or is designated to respond regarding the subject matter requested.

If unusual circumstances exist that preclude a timely response, the responsive FOIA office should provide an interim response, giving an estimated completion date and reason(s) for delay. Unusual circumstances are:

- The Army FOIA Office receiving the request has a significant number of pending requests that preclude a final response within 20 working days.
- The complexity of the request or volume of responsive records prevents a final response within 20 working days.
- Need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.
- The need to search for, collect, and examine a voluminous amount of separate and distinct records which are requested in a single request.
- The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the release determination, or among two or more DoD Components having a substantial subject-matter interest in the records.

13. How do I qualify for expedited processing of my request?

You must request expedited processing *and* demonstrate one of the following compelling needs. Please note that exceptional need or urgency is determined at the discretion of the Army Activity processing the request.

Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged current Federal Government activity.

Other reasons that merit expedited processing are an imminent loss of substantial due process rights.

14. Do I have to pay for a FOIA request?

The FOIA allows uniform fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given depending upon the category of the requester, and/or if disclosing the information is in the public interest. Fees are assessed based on costs of duplication and the grade level(s) of employees processing the request. The DoD establishes fee rates, which are generally assessed for Search and Review time (E-1 to E-9/GS-1 to GS-8 = \$20.00 per hour; O-1 to O-6/GS-9 to GS-15 and Contractors = \$44.00 per hour; O-7 and SES and above = \$75.00 per hour), and duplication costs at .15 cents per page. The FOIA requires that requesters be placed into one of the below categories for fee determinations:

- Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review, and duplication.
- Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees at .15 cents per page, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.
- Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees at .15 cents per page, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.
- News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publicize or broadcast news to the public. News media pay only duplication fees at

.15 cents per page, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

- “All Others”. Requesters who do not qualify in another category are considered “All Other” requesters and normally make requests for agency records for their personal use. “All Other” requesters are entitled to the first two hours of search effort and the first 100 pages of records at no cost. “All Other” requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired. If processing requires less than this amount, the information should be provided at no cost.

All requesters must submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. Fees are automatically waived if they do not exceed the threshold of \$15.00. On a case by case basis, waivers are considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

- The subject of the request.
- The informative value of the information to be disclosed.
- The contribution to an understanding of the subject by the general public likely to result from the disclosure.
- The significance of the contribution to public understanding.
- Disclosure of the information is not primarily in the commercial interest of the requester.
- The ability of the requester to disseminate the information.

15. What happens if I send my request to the wrong Agency?

Every effort will be made to provide your request to the appropriate activity. Misdirected requests are forwarded to the FOIA Office with the responsibility for the records requested. The period allowed for responding to a misdirected request should not begin until the request is received by the FOIA Office that maintains or has purview over the requested records.

16. What does aggregating requests mean?

Aggregating is when multiple requests along with expended search time and duplication costs are combined for the purpose of determining a fee chargeable to the requester. Requests may be aggregated if a requester files multiple requests at or near the same time, each seeking portions of a document or documents, or portions of a collection of records. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly.

Section II. Reading Room

Under subsection (a)(2) of the FOIA, agencies make records disclosed in response to a FOIA request that “the agency determines have become or are likely to become the subject of subsequent requests.”

The Army’s Electronic Reading Room is located at:

https://www.rmda.army.mil/foia/FOIA_ReadingRoom/err-main.aspx

Section III. FOIA Requester Service Centers, FOIA Public Liaison Officers, and Initial Denial Authorities (IDA)

FOIA Requester Service Centers

To receive additional information pertaining to the response to your FOIA request, or to learn the status of your pending FOIA request, please contact the Requester Service Center, shown below, with responsibility over the area to which you submitted your request.

The below link provides the current listing of the Army’s FOIA Requester Service Centers:

<https://www.rmda.army.mil/foia/docs/foia-servicecenters.pdf>

FOIA Public Liaison Officers

Serves as supervisory official to whom you may raise concerns about the service you have received from a FOIA Requester Service Center following an initial response to you from the center staff. Please contact the FOIA Public Liaison Officer if you have concerns about information you have received about your FOIA request after contacting the appropriate FOIA Requester Service Center.

The below link provides the current listing of the Army's FOIA Public Liaison Officers:

<https://www.rmda.army.mil/foia/docs/foia-plo2.pdf>

Initial Denial Authority (IDA)

Initial Denial Authority (IDA) is an official who has been granted authority by the head of a DOD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from Mandatory disclosure.

The below link provides the current listing of the Army's IDAs:

<https://www.rmda.army.mil/foia/docs/foia-ida.pdf>

Section IV. Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with the Department of the Army.

If you have any suggestions contact us at:

Department of the Army
Freedom of Information Act Office
7701 Telegraph Road, Suite 144
Alexandria, VA 22315-3905

Telephone: (703) 428-6500

Email: dafoia@conus.army.mil

APPENDIX A

SAMPLE FOIA REQUEST LETTER

Army Component Head [or FOIA Officer], Army Component, Address

Dear:

This is a request under the Freedom of Information Act (5 U.S.C. 552).

I request that a copy of the following document(s) be provided to me. [Identify the document(s) as specifically as possible, providing any details you possess, such as title of document, date, originating office/organization, subject matter, etc.].

In order to help you determine my status for the purpose of assessing fees, you should know that I am [Insert one of the descriptions below]

an individual seeking information for personal use and not for a commercial use.

affiliated with a private business and am seeking information for use in the company's business.

a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or non-commercial scientific institution, and this request is made for a scholarly or scientific purpose and not for commercial use.

I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the Army and is not primarily in my commercial interest. [Include details about how the requested information will be informative and of interest to the general public and how it will be disseminated by you to a wide segment of the general public]

[Optional] I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Name
Address
City, State, Zip Code
Telephone Number [Optional]
Email Address [Optional]